

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1669 of 1997

to

FIRST APPEALNo 1712 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER

Versus

JOYTA JAGMAL KANBI DECD. THRO' HEIR DANA JOYTA KANBI

Appearance:

MR SJ DAVE, AGP for the appellants in FA 1669 to 1690/97.

MR PG DESAI, GP for the appellants in FA 1691 to 1712/97.

MR VS MODI, for the respondents.

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 22/04/98

1. Heard the learned counsel for the respective parties. Appeals are admitted. Mr. Vipul Modi waives service on behalf of the respondents-original claimants.

2. On a joint request of learned counsel for the respective parties, these appeals are taken up for final hearing today.

3. These appeals have been filed on behalf of the State of Gujarat under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

4. The lands in question were acquired for the SIPPUR Reservoir Project by notification under section 4 issued on 18th October 1984. Thereafter the prescribed procedure was followed leading to filing of the References under section 18, which resulted in a common judgement and awards passed by the Reference Court under section 18 of the said Act, which is the subject matter of the present appeals. The Reference Court, on the basis of the evidence on record and in view of the findings arrived at, valued the acquired lands at Rs.45000/- per hectare (Rs.4.50 per square meter) for irrigated lands and Rs.40000/- per hectare (Rs.4.00 per square meter) for non-irrigated lands.

5. We have heard the learned counsel for the respective parties on the basis of the impugned judgement, and have also examined such evidence which was considered necessary by learned counsel for the respective parties. As a result of this exercise, we are satisfied that the treatment meted out by the Reference Court to the material on record, and the findings recorded thereon are not satisfactory. It also appears to us that even on the question of the market value as determined by the Reference Court, the figure so determined is not sustainable, and that there is at least some justification on the part of the appellant-State to reasonably claim and expect some reduction thereof.

6. As a result of the hearing and discussion on this aspect, our attention has been drawn to a previous decision of this very Bench in First Appeal Nos.1725/97 to 1761/97, decided on 6th April 1998, wherein we had dealt with the acquisition of lands from this very same village viz. Moti Mahudi, wherein the lands were acquired for this very same project. Under the aforesaid

decision we had determined the market value at the rate of Rs.3.50 per square meter for both irrigated and non-irrigated lands, reducing the market value determined by the Reference Court at Rs.4.50ps per square meter for irrigated land and Rs.4.00 per square meter for non-irrigated lands. In view of our aforesaid decision, which is almost parallel on the facts of the instant case, it was put to learned counsel for the respective parties as to what would be a fair and reasonable amount of compensation in view of the particular facts of the case, in view of the evidence on record, in view of the contentions raised and in view of our aforesaid earlier decision. In this context learned counsel for the respondents-original claimants fairly conceded that there is certainly some scope for reduction, and that interests of justice would be served in consonance with the entire set of facts and circumstances on record, if this court were to determine the market value of the acquired lands between Rs.4.00 and 3.50ps per square meter, on a flat rate applicable both to irrigated and non-irrigated lands. In the context of this offer/concession, learned counsel for the appellant-State was unable to contest the fairness of the offer and/or to justify any further downward revision.

7. Thus, on the facts and circumstances of the case, and having applied our minds to the entire package of circumstances, evidence, contentions, etc., we determine the market value of the acquired lands at a flat rate of Rs.3.50ps per square meter for both irrigated and non-irrigated lands.

8. Another aspect which requires consideration arises from the observations made in the impugned judgement in paragraph 13 thereof, as regards the entitlement of the claimants' compensation for wells (both constructed and non-constructed), for fruit trees and trees fit for fire-wood. From the observations made in the said paragraph, particularly looking to the ambiguity and vagueness of the observations referred to, an impression is created that this is the amount awarded by the Reference Court to the claimants in respect of these heads of claim. However, we find from the operative part of the award that the same is entirely silent in respect of any compensation under these heads. It is futile to speculate whether this is a ministerial error or that the Reference Court did not intent to make any awards under these heads. Under the circumstances we merely record that according to learned counsel for the appellants-State, since no compensation has been awarded under these heads in the operative part of the award, no

grievance arises on the part of the appellants. On the other hand, learned counsel for the respondents-claimants also clarified and stated that he has no grievance whatsoever in respect of any compensation under these heads, and if no compensation under these heads has been awarded (looking to the operative part of the awards), he makes no grievance in that regard. We, therefore, find and hold that the claimants shall not be entitled to any amount of compensation under the heads of wells, whether constructed or otherwise, fruit trees and/or trees of any other kind.

9. A further clarification is necessary in the context of solatium as awarded by the operative part of the award. Here again, the language used by the Reference Court is most vague and unsatisfactory and is also likely to lead to a confusion which perhaps the Reference Court did not intend. We, therefore, clarify that the amount of solatium awarded at the rate of 30% shall be computed only on the market value of the lands under acquisition (as determined by us herein) without reference to any other compensation payable under section 23(1-A) and section 28 of the said Act.

10. A further clarification is necessary in respect of the amount awarded under section 23(1-A), in view of the vague and unsatisfactory language employed by the Reference Court. In this context it is clarified that the original claimants-land holders will be entitled to additional compensation under section 23(1-A) of the Act, computed on the basis of 12% per annum on the market value of the acquired lands (as determined by us herein), computed for the period commencing from the date of publication of the notification under section 4 upto the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

11. A similar clarification is also necessary in respect of the amount awarded by the Reference Court under section 28 of the said Act. In this context it is clarified that the claimants-original land holders would be entitled to interest on the difference of the compensation between the amount awarded by the Land Acquisition Officer and the amount awarded by us herein, at the rate of 9% per annum in the first year from the date on which possession was handed-over, till the date of payment into court, and at the rate of 15% per annum from the commencement of the second year until the difference is paid or deposited in the court.

12. There is yet another aspect where the impugned

judgement and awards require to be interfered with. In the impugned judgement the Reference Court has deducted from the total amount of compensation payable to the claimants a sum of 5% on account of the fact that some of the lands in question were new tenure lands. This principle has been completely negatived by the Supreme court in its decision in the case of State of Maharashtra Vs. Babu Govind Gavate, reported at AIR 1996 SC 904. The said decision clearly lays down that no such deduction is justifiable even in respect of the new tenure lands. This decision of the Supreme Court has also been referred to and followed by an earlier Bench of this Court in the case of Dy.G.M., O.N.G.C. Vs. Chaturji Lalaji, reported at 1998(1) GLR page 130. We, therefore, hold and direct that this 5% deduction directed by the Reference Court is unjustified and therefore quashed and set aside. Consequently the compensation as directed by us herein would be paid without any such deduction.

13. No other contentions have been raised by either side.

14. Accordingly these appeals are partly allowed with no other as to costs. Decree accordingly. Direct service is permitted.
